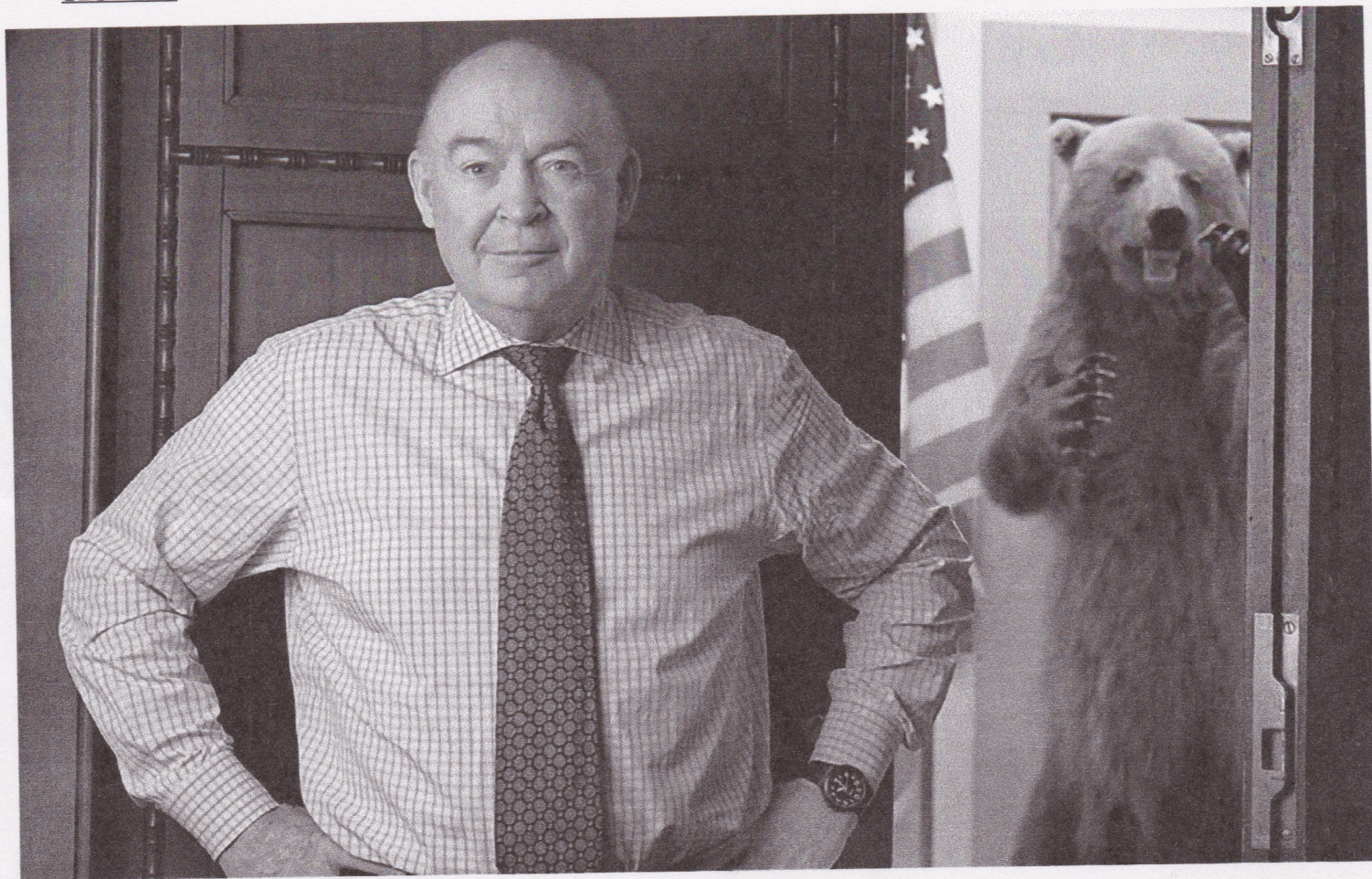


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For the Record

By Justin Gerdes

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Love Canal. The Exxon Valdez. Deepwater Horizon. Volkswagen. Blockbuster cases, yes. But they're only part of the story for John C. Cruden J.D. '74, a civil servant for decades and defender of the environment.

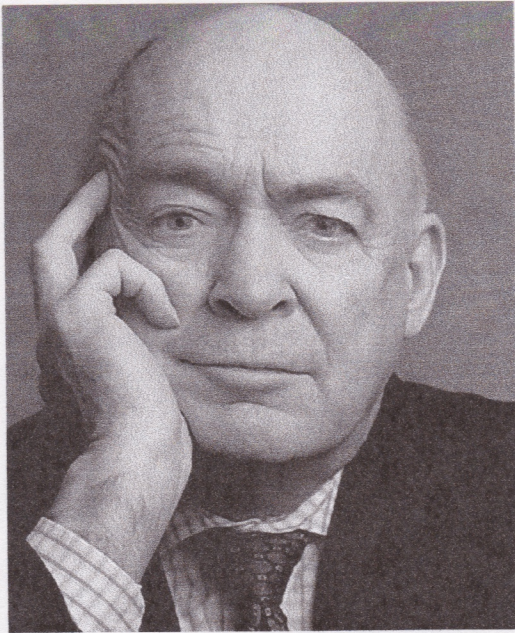
On December 15, 2016, Assistant Attorney General **John C. Cruden J.D. '74** joined Virginia Governor Terry McAuliffe in Richmond, Virginia, to announce terms of a proposed settlement with DuPont. Under the deal, DuPont agreed to pay \$50 million to settle claims

stemming from the release of mercury by a DuPont rayon plant in the 1930s and '40s, which polluted more than 100 miles of river and floodplain in the South Fork Shenandoah River watershed. Mercury persists in the watershed to this day, harming fish, migratory songbirds, reptiles, amphibians, and mammals—and limiting recreational fishing. The deal is the largest natural resource damage settlement in Virginia's history. The case demonstrates the power of environmental law to redress even decades-old pollution. But it also reminds us that the arc of history, if it does bend toward justice, justice can take a long time indeed.

America's 2.7 million civilian federal employees serve the country, largely with distinction and noble purpose, and, regrettably, often in relative obscurity. Among those most deserving of wider recognition for this public service was the lawyer representing the United States in Richmond that day, John Cruden. Cruden worked first as a career attorney in the U.S. Army and, later, for nearly 25 years, served in senior positions at the Department of Justice's Environment and Natural Resources Division (ENRD), leading attorneys engaged in offense and defense, charged both with bringing cases against polluters and defending the federal government against lawsuits brought by companies or individuals. The division is, in practice, the largest environmental law firm in the United States.

Cruden's career has overlapped with the emergence of environmental law in the United States, decades during which this new area of the law became an increasingly effective enforcement tool. Indeed, some of the most important environmental cases ever litigated in this country bear his fingerprints. As chief of environmental enforcement for the United States, Cruden supervised the end of the litigation, and approved the final settlements, in response to the Exxon *Valdez* oil spill and the industrial pollution disaster at the Love Canal neighborhood in Niagara Falls, New York. In recent years, Cruden personally led the negotiations and signed and approved the three consent decrees resulting from the Deepwater Horizon oil spill in the Gulf of Mexico and the Volkswagen vehicle emissions cheating scandal.

From 1995 to 2011, Cruden served as the deputy assistant attorney general, ENRD's top career official, across Republican and Democratic administrations. He led the division twice on an acting basis during previous presidential transitions. In December 2014, Cruden was unanimously confirmed to ENRD's top job by the U.S. Senate. In doing so, the Senate entrusted Cruden, one of the most experienced and respected environmental litigators in the United States, with managing a team of 450 attorneys.



Kansas-born and raised in Michigan by adopted parents—a father who operated a crane for Ford Motor Co., and a mother who worked in the defense industry during WWII. Camping and hiking taught young Cruden a love of nature early on. *Photo by Robert Clark*

Then-U.S. Attorney General Eric Holder had persuaded Cruden to leave what Cruden thought would be his last job, president of the Washington, D.C. based nonprofit Environmental Law Institute, to return to the Department of Justice for the final two years of President Obama's second term. By all accounts, Holder could not have found a better person for the job. "He's the most well-respected attorney in the history of the environment division and perhaps the entire environmental bar. That's no exaggeration," former DOJ environmental attorney Justin Savage told *Greenwire* in 2015. "People respect John, they admire him even if you disagree with him. He has integrity that exceeds any normal person's expectations."

On the morning after the DuPont announcement, I sat down with Cruden for an interview in his second-floor conference room at the Robert F. Kennedy Department of Justice Building, just off the National Mall, in Washington, D.C. At a time of considerable uncertainty, with the inauguration of President-Elect Donald J. Trump then a little more than a month away, Cruden himself projected steadiness, stressing the resilience of the rule of law, no matter the administration in power. His faith in that system is about to be tested.

From Saigon to Santa Clara

It's unlikely that in the more-than-century-long history of the Santa Clara University School of Law another graduate has followed a path quite like the one Cruden took to the Mission campus. In early 1970, Cruden, a West Point graduate, arrived in Vietnam. He would have

extensive exposure to combat, first as a senior advisor to a Ranger unit and later with the Special Forces. For his valor, Cruden was awarded a Bronze Star and the Vietnamese Cross of Gallantry with Silver Star. But the infantry was not his calling. At West Point he was inspired by Pete Dawkins, a Rhodes Scholar and Heisman Trophy winner, who taught courses in national security and social science. Cruden set course to become a lawyer. He learned the LSAT was to be offered in the spring of 1971, in Saigon. Cruden recalls checking his gun at the door and being handed a pencil. When he and the other would-be lawyers finished, a helicopter was waiting to take the soldiers back to their units.

By the time his LSAT results arrived, only the law schools at Santa Clara and Georgetown were still accepting applications. Cruden applied and was accepted to both schools. Santa Clara accepted him first, aware he was in Vietnam. Based on recommendations from military legal staff in Saigon, as well as the reputation of the law school's clinic program, Cruden chose Santa Clara.

He moved to Santa Clara to enroll. "I've always been grateful of it, because they were taking a risk," Cruden said, still sounding a bit surprised the law school was so accommodating of his unusual circumstances. "My applications were handwritten. It wasn't extremely sophisticated," he told *Washington Lawyer* a few years ago.

At Santa Clara, he said, "I had a bevy of really good professors." He names law school dean **George Alexander** ("a great constitutional scholar"), **Jerry Kasner**, and **Kenneth Manaster**—who arrived in 1972 and established himself as one of the leading environmental lawyers in California. One scholar he sees any time he is in California or his former mentor is in the capital: Fr. **Paul Goda**, "someone I deeply admire." He also counts as a friend former DOJ colleague and former EPA deputy general counsel **Tseming Yang**.

With the benefit of hindsight, it's apparent just how much the Jesuit social justice tradition influenced Cruden's path to public service. "They gave you a sense of the higher calling of the legal profession. They instilled in us responsibility to the disadvantaged and the poor, to do more for others than our daily practice, and to make sure that the rule of law was advanced in every aspect of our professional life. Law school made me really proud of the profession and gave me a heightened sense of responsibility to public and private service," he said.

Cruden made the most of the opportunities earned and offered at Santa Clara. He was on the Law Review. He participated in a special program with the Public Defender Clinic in Stanford Law School, where his supervising attorney was Rose Bird, who later became the chief justice of the California Supreme Court and a family friend. During his third year, he clerked for California Supreme Court Justice Stanley Mosk. Over this entire period, because Cruden's leave from the Army was unpaid, he and his wife, who was herself busy attending graduate school at San Jose State University and later teaching at De Anza College, managed a large apartment complex in exchange for free rent.

Even though Cruden was granted leave to attend law school, during summer breaks he reverted to active military duty. He commuted daily to Fort Ord on Monterey Bay and served in the military legal group. After graduation, Cruden served as a career Army lawyer in the United States and abroad. He was a criminal prosecutor in Germany and civil trial lawyer at the Pentagon. He taught administrative and civil law at the Army Judge Advocate General's School in Charlottesville, Virginia. During a one-year posting to the Department of Justice, the first military lawyer assigned as a special counsel to the assistant attorney general of the Civil Division, Cruden met and briefed President Reagan on drug testing protocols.

By 1988, Cruden was the Army's chief legislative counsel. The job involved extensive interaction with Congress and was an immersion in Capitol Hill politics; that would prove valuable in the second act of Cruden's government career. The job also made him part of an unusual and dangerous legal drama. Cruden's office learned that a U.S. Special Forces major had information that could help bring to justice the ringleader of the Salvadoran army unit responsible for the murder of six Jesuit priests and two women at the University of Central America in San Salvador in November 1989. Cruden traveled to El Salvador to represent the major in a grand jury investigation. Because of risk to the informant, a U.S. Special Forces team met Cruden and the major at the airport to escort them to the U.S. ambassador's residence, where the grand jury convened.

This was to be Cruden's last job as a military lawyer. Cruden had handled some environmental cases as an Army lawyer. He had also lectured on environmental law and authored part of a casebook on the topic. In 1991, senior officials at the Department of Justice, connections Cruden made during his posting to the department during the Reagan administration, "made [him] an offer he could not refuse." He was offered the job of Chief of the Environmental Enforcement Section in the Environment and Natural Resources Division, charged with leading the largest litigation section at the Department of Justice, with 250 people and 150 lawyers.

"I was ecstatic," he said. "I loved the jobs I had in the military, but this was a chance to put together something I personally was extremely interested in, and it was a growing area of the law." He accepted the job and served in the role for four years.

He would indeed be joining a growing area of the law. When Cruden attended the Santa Clara School of Law, no courses were offered in environmental law. Many of America's landmark environmental laws—the National Environmental Policy Act (1969), Clean Air Act (1970), Clean Water Act (1972), Endangered Species Act (1973), co-authored by former Santa Clara University lecturer and longtime California Congressman **Pete McCloskey Jr.**, and the Safe Drinking Water Act (1974)—had just taken effect or were being written during Cruden's three years at Santa Clara. Cruden's eventual rise to lead ENRD mirrors the rise of environmental law as a mature area of specialization of the law. Today, courses on environmental law are offered at dozens of law schools nationwide. Cruden's generation of lawyers deserves much of the credit for gifting environmental law to the world.

Captain of an Aircraft Carrier

In our conversation at his office, Cruden described the two tracks of work undertaken by his division: Attorneys follow the evidence and bring cases under America's bedrock environmental statutes such as the Clean Air Act and Clean Water Act, or they defend client federal agencies against lawsuits. It's a heavy caseload. In his final end-of-year letter to ENRD staff, Cruden said his team had successfully litigated nearly 800 cases and handled nearly 5,400 cases, matters, and appeals in 2016.

I asked Cruden if he was concerned about the direction the division may go under his successor, and with a fossil fuel friendly, antiregulation administration about to take office. Cruden stressed the momentum of the daily churn at ENRD. "We get sued every day; every single day we're getting sued. We also bring our own actions almost every day."

"It's not like you sit in this chair and go, 'Well, I have 450 lawyers, they have nothing to do, and I'm going to give them stuff to do.' It's not that way; it's just the opposite. They're *already* working endless hours. They already have a huge docket of cases. Half of what we do is people suing us, which you can't control. It's not like I would come in here and say, 'Stop doing Clean Water Act enforcement, and I only want you to do something on public lands.' These are cases that are going to happen and that you have to work; you have almost no choice."

He went on, "Now I can move some. I can say, 'All right, I want to stress environmental justice. I want to stress wildlife enforcement. I want to integrate the principle in enforcement that we're going to take the profit out of polluting activity.' What I can't do is say, 'Let's stop doing a thousand cases and just go in another direction.' I can't do it—and nor could any of my predecessors. Remember, I served as a career person under Republican administrations as well as Democratic administrations. You can move a bit, but it's not what people think. People think it's going to be a wholesale change; it doesn't work that way."

"I get asked countless times, 'So a new administration comes in, are they going to change all their litigating positions?' I say, 'It doesn't work that way; it just doesn't.' What we said about the law during the George W. Bush administration, we say the same thing about the law during [the Obama] administration, because if we don't then somebody is going to file a brief and say, 'Which time were you lying? Were you lying the first time you filed the brief or the second time you filed the brief?' Our opponents know all this. All of our briefs are public. So if we in fact say different things about the law, the courts will be irate."

So how would change come about? Look to the agencies with policy responsibilities that write regulations, said Cruden. "We are defending their policies, which come through guidance documents, or regulations, or the president through executive orders. Some of that you can change, and if you do change, assuming that the new process is in accordance with the law, we would defend that."

"And if you *do* change your position," Cruden continued, "you're going to litigate it and sometimes lose—because if you change your position, you actually have to have a reason, a thoughtful process by which you go through that's guided by the Administrative Procedure Act. You have to have a defensible reason why you changed your mind. It doesn't happen that all of a sudden a new attorney general comes in and says, 'Change your positions on all the laws. I don't like what you did.' What really happens is that federal agencies, going through a process, review what they've done and see what they've agreed with and what they don't. Then that causes us not to change our position on the law, but to defend another policy."

"I describe my job sometimes like I'm the captain of some big aircraft carrier," he said. "You can move it, but it moves slowly."

Running Through the Tape

It is fitting that 2016 likely will serve as the capstone to John Cruden's career as a government attorney and public servant. In a year-end staff memo, Cruden highlighted three "extraordinary events" that marked 2016: the settlement with BP for the Deepwater Horizon oil spill disaster; prosecuting Volkswagen for cheating vehicle emissions tests and deceiving customers; and defending President Obama's Clean Power Plan, regulations intended to reduce carbon emissions from coal-fired power plants. In February 2016, the U.S. Supreme Court voted to issue a stay preventing the Environmental Protection Agency from implementing the plan. Justice Antonin Scalia's vote in support of the stay was the last he cast before his death.



An explosion on the Deepwater Horizon oil drilling platform on April 20, 2010, killed 11 workers and started the largest marine oil spill in U.S. history. Photo courtesy Wikimedia

Cruden described 2016 as the "most successful in the Division's history in virtually every category." The April 2016 consent decree that resolved the civil claims of the United States and five Gulf Coast states against BP for the Deepwater Horizon oil spill requires BP to

pay more than \$20 billion. According to Cruden, the agreement represents the largest settlement with a single entity in the history of federal law enforcement, the largest-ever Clean Water Act civil penalty, and the largest-ever recovery of damages for injuries to natural resources.

On January 11, 2017, nine days before the end of Cruden's tenure, the Department of Justice announced Volkswagen agreed to plead guilty to three federal criminal counts and to pay \$4.3 billion in criminal and civil penalties. Six VW executives and employees were indicted for conspiring to cheat on emissions tests. In all, VW will pay at least \$20 billion in the United States alone to settle claims connected to the scandal.

And while Cruden described the moment he learned of the Supreme Court stay of the Clean Power Plan as "the worst moment on the job," he said the subsequent defense of the rule by ENRD attorneys before U.S. Court of Appeals for the D.C. Circuit, in September of 2016, made him "as proud as I've ever been at the Department of Justice by the advocacy and the sheer good lawyering by our team of lawyers." As of this writing, the D.C. Circuit had not released its ruling on the Clean Power Plan.

Love Canal. Exxon Valdez. Deepwater Horizon. Volkswagen. Cruden's role in bringing these blockbuster cases, as well as hundreds more now long forgotten, to resolution helps to explain why he has been in government so long. An attorney with Cruden's experience, track record, and connections will always be an exceedingly desirable commodity for law firms and lobbying shops that represent corporate clients.

Asked why he decided to stay in government service for so many years, Cruden said: "I've said that not every day, and not in every case, but in a lot of days and a lot of cases I can drive back home at night and say, 'I think I made a difference today,' and that is such a wonderful feeling. I think all of us have that here. There's something extraordinary about being able to stand up in court and say, 'If you please, I'm about to present the position of the United States.' That is such an honor to be able to do that. It's a great responsibility, but it's also exhilarating." The same sense of purpose and duty helps to explain why Cruden's colleagues often choose to make the division their home. For many staff attorneys, he said, ENRD was their dream job coming out of law school. With immense pride, Cruden paused during our interview to show off a certificate displayed on the conference room table proclaiming ENRD the No. 2 place to work in the federal government.



The Exxon Valdez struck a reef on March 24, 1989, and released 11 million gallons of oil into Alaska's Prince William Sound, fouling 1,300 miles of coastline. Photo courtesy Wikimedia

Like President Obama, Cruden's last day was January 20, 2017. He said that he met with Obama and the president told him, "Run through the tape. Right to the very end, right to your last day, be doing good things for the American people." I like that analogy, and I passed it on to all of my staff. I told everybody, "That's what we're going to do, we're going to run through the tape."

Cruden did as promised. He ran through the tape until January 20 and scored big wins for public health and the environment until his final days on the job. Cruden, at 70 years old, still very much the vigorous bull of a man who decades before had completed 30 parachute jumps in an airborne battalion in Germany and a Ranger unit in Vietnam, wasn't sure of his long-term plans. As we concluded our interview at his office, Cruden said he was preparing for a weeklong Road Scholar educational trip to Costa Rica with the entire family. He'd been promised he'd be zip-lining in the jungle on Christmas Day. In the days immediately after Trump's inauguration was a long-planned, monthlong vacation with his wife and more time with his two grandchildren.

Cruden was recently selected as president-elect of the American College of Environmental Lawyers. As this issue went to press, the Trump administration had not named Cruden's permanent successor at DOJ. On Inauguration Day, Jeffrey H. Wood was named the acting assistant attorney general of the Environment and Natural Resources Division. Wood, who, until a week before the appointment was a lobbyist for the Southern Company, one of America's largest gas and electric utility holding companies, served for more than three years as a legal counsel to former U.S. Senator Jeff Sessions, now attorney general of the United States. Wood participated in suits seeking to block President Obama's Clean Power Plan.

It is not clear if Wood will be nominated to lead the division on a permanent basis, nor is it clear how many attorneys will work under him or another ENRD chief. On January 19, *The Hill* reported that in meetings with career staff at the White House, Trump's transition team presented plans to slash the federal budget and workforce. At the Department of Justice, the proposed cuts would eliminate the Office of Community Oriented Policing Services and Violence Against Women Grants, and the Civil Rights and Environment and Natural Resources divisions were targeted for funding cuts. If the Trump budget blueprint is adopted by the Republican-controlled Congress, staff reductions could be coming to the Environment and Natural Resources Division.